

REMARKS

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

Summary of Office Action

In the Office Action, beginning at page 2, the Abstract is objected to for allegedly being too long and including improper language.

In the Office Action, beginning at page 2, the disclosure is objected to as allegedly not containing a brief description of the drawings section.

In the Office Action, beginning at page 3, claim 4 is objected to as allegedly having insufficient antecedent basis for the feature of a feeding tube at line 3 in the claim.

In the Office Action, beginning at page 3, Claims 1-4, 6-8, 10, 12, 15, and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,529,575 to Schalk (Schalk'575).

In the Office Action, beginning at page 5, Claims 5, 9, 11, 13, 14, 16, and 18-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Schalk'575 as applied to claims 1 or 4 or 10, and further in view of U.S. Patent No. 5,010,847 to Braden (Braden'847).

Summary of Response to Office Action

In Response to the September 14, 2007 Office Action, Applicant hereby amends claim 1 to include the features of dependent claim 2 and cancels claim 2 without prejudice or disclaimer. Accordingly, claims 1 and 3-20 are currently pending, claim 2 is canceled without prejudice or disclaimer, and claim 1 is the only pending independent claim.

Objection to Specification

In the Office Action, beginning at page 2, the disclosure is objected to as allegedly not containing a brief description of the drawings section.

Applicant notes that the Brief Description of the Drawings section is included at page 25

of Applicant's originally filed specification. Accordingly, withdrawal of the objection to the specification is respectfully requested.

Objection to Claim 4

In the Office Action, beginning at page 3, claim 4 is objected to as allegedly having insufficient antecedent basis for the feature of "the feeding bottle" as it appears in line 3 of the claim. Applicant notes that the feature of "[a] feeding bottle" is first set forth at line 1 of claim 3. Therefore, there is sufficient antecedent basis for this feature as it appears in line 3. Accordingly, withdrawal of the objection to claim 4 is respectfully requested.

All Claims Are Allowable

Claims 1-20 in this application are rejected under various provisions of U.S. law. Applicant respectfully submits that all claims are allowable for the specific reasons set forth below, and therefore requests issuance of this application.

35 U.S.C. § 102(b)

In the Office Action, beginning at page 3, Claims 1-4, 6-8, 10, 12, 15, and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Schalk'575. Applicant respectfully traverses this rejection and requests reconsideration for the following reasons.

The Office Action indicates that "Schalk discloses an artificial nipple for an experimental animal comprising, a replaceable duct – at 18, in an nipple – at 19 – see figures 3 and 6, and a structure – at 36, 41, 43, 42, 37, that prevents a liquid from accumulating in the nipple except in a nipple tip and the duct – see figures 3 and 6." This characterization of Schalk'575 is not proper. First, Schalk'575 does not relate to an artificial nipple. Instead, Schalk'575 relates to a wholly different category of invention – an animal drinking bottle including an animal-actuable valve or an animal-drinking valve. The specific deficiencies of Schalk'575 will be described in detail below.

The member 19 is not a nipple, but instead is properly characterized in Schalk'575 as a valve assembly. Furthermore, Schalk'575 fails to disclose at least the feature of a nipple made of a material and configured to be elastically deformable such that an interior volume of the nipple is changed when the nipple is sucked by the animal, as recited in claim 1. The valve assembly 19 cannot reasonably be considered equivalent to such a nipple. Valve structures in general are rigid structures, and one skilled in the art of animal feeding devices would understand that the valve assembly 19 does not function in the same manner nor can reasonably be considered analogous to the nipple as recited in claim 1. This argument is supported by the fact that the body part 27 of the assembly 19 has an inner thread that is engageable with the outer thread of the end part of the bottle 10. Accordingly, the assembly 19 is not elastically deformable such that an interior volume of the nipple is changed when the nipple is sucked by the animal as recited in claim 1, and which is an inherent feature of a nipple structure.

In addition, member 18 of Schalk'575 cannot reasonably be considered a replaceable duct. Member 18 is the opening of the end of the bottle 10 of Schalk'575. Accordingly, the member 18 of Schalk'575 does not constitute a replaceable duct, as recited in pending claim 1, but instead is just part of the bottle 10 itself.

Furthermore, the structure formed by the members 36, 41, 43, 42, 37 is not used for preventing a liquid from accumulating in the space, but constitutes the valve structure. Accordingly, the purpose and the configuration thereof are quite different from those of the "structure that prevents liquid from accumulating in the nipple" which can be formed as an "elastic member" as recited in claim 1. Because the members 36, 41, 43, 42, 37 of Schalk'575 are the valve structure, the members are rigid structures except for the valve head 43 which functions as a spring. Accordingly, the entire structure should be considered rigid as compared to the recited elastic member of claim 1.

With respect to claim 3, the Office Action indicates that member 41 is considered to anticipate the feature of a check valve provided in a joint part with a feeding bottle. In this paragraph of the Office Action, the member 18 is admittedly a part of the feeding bottle 10. This provides further evidence that there is no duct disclosed in Schalk'575. Accordingly, Schalk'575

cannot reasonably be considered to anticipate Applicant's claim 1.

Furthermore, the member 41 is not a check valve, but a feeding switch valve which simply opens and closes. A check valve is used not only for opening and closing but also for preventing reverse flow. Accordingly, if a pressure due to reverse flow is applied to the valve, the valve is closed. However, in Schalk'575, the member 41 may be actuated only by the action of the member 34 (stem) axially, rearwardly or radially to cause the rear stem 42 to unseat the valve head 43. In view of this fact, member 41 is not a check valve.

Furthermore, during operation of the Schalk'575 device, when an animal wants to drink milk or the like, the animal strongly sucks the valve assembly. In this case, the sucking action may draw the stem 34 and, accordingly, the stem 34 moves out to close the opening. This means the sucking animal cannot drink milk anymore. It is the sucking action that may lead to actuation of the valve stem to close the opening, which is not a characteristic action of an artificial nipple. This further confirms that the assembly is not a nipple, but simply a rigid valve for permitting liquid to flow out of the system. As one skilled in the art can easily recognize, a nipple is structurally and functionally different from the structure and function of the valve assembly disclosed in Schalk'575.

It is a common patent law tenet that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. Of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). In this case, Schalk'575 fails to disclose at least the feature of a nipple made of a material and configured to be elastically deformable such that an interior volume of the nipple is changed when the nipple is sucked by the animal, as recited in claim 1.

Further, since claims 3, 4, 6-8, 10, 12, 15, and 17 depend from and respectively incorporate all the features of claim 1, claims 3, 4, 6-8, 10, 12, 15, and 17 are also not anticipated by Schalk'575 at least for the above reasons for which claim 1 is not anticipated, and for the separate features that they recite.

For at least the above reasons, it is respectfully submitted that the rejection under 35 U.S.C. § 102(b) is in error. Thus, Applicant respectfully requests that the rejection of claims 1-

4, 6-8, 10, 12, 15, and 17 under 35 U.S.C. § 102(b) be withdrawn.

35 U.S.C. § 103(a)

In the Office Action, beginning at page 5, claims 5, 9, 11, 13-14, 16, and 18-20 were rejected under 35 U.S.C. § 103(a) as reciting subject matter that is allegedly obvious, and therefore allegedly unpatentable, over the disclosure of Schalk'575 in view of the disclosure of Braden'847. This rejection is respectfully traversed, and Applicant requests reconsideration for at least the following reasons.

Braden'847 is directed to a calf feeder bottle used for dry feed that includes calibration markings on an outside of the bottle. It is respectfully submitted that there would have been no motivation to combine Braden'847 with Schalk'575. Specifically, Braden'837 is directed to a dry feed device while Schalk'575 is directed to a device for dispensing liquids. One of skill in the art would not have looked to Braden'847 in order to somehow modify Schalk'575 because they dispense different materials and are structured differently. The only reason one would look to Braden'847 in order to modify Schalk'575 is through the use of Applicant's claims as a roadmap, which is the exact definition of using impermissible hindsight.

The Office bears the initial burden of establishing a *prima facie* case of obviousness. M.P.E.P. § 2142. If the Office fails to set forth a *prima facie* case of obviousness, Applicant is under "no obligation to submit evidence of nonobviousness," such as unexpected results or commercial success. *Id.* In other words, if the Office fails to meet the initial burden of establishing a *prima facie* case of obviousness as to a given claim, then that claim is not obvious without any specific evidence of nonobviousness by Applicant.

In order to establish a *prima facie* case of obviousness, the Office must satisfy three requirements. M.P.E.P. § 2142. First, "the prior art reference, or references when combined, must teach or suggest *all* the claim limitations." *Id.* (emphasis added). Second, the Office must show that there is "some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." *Id.* Finally, "there must be a reasonable expectation of success."

Id.

In the present case, as stated above, there is no motivation to modify the disclosure of Schalk'575 with the teaching of Braden'847.

For the above reasons, it is respectfully submitted that there is no *prime facie* case of obviousness with respect to claims 5, 9, 11, 13-14, 16 , and 18-20. Thus, Applicant respectfully requests that the rejection of claims 5, 9, 11, 13-14, 16 , and 18-20 under 35 U.S.C. § 103(a) be withdrawn.

Conclusion


Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of this patent application is therefore respectfully solicited.

If the patent Examiner believes that a telephone conference with the undersigned would expedite passage of this patent application to issue, he is invited to call on the number below.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. If, however, additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and the Commissioner is hereby authorized to charge fees

necessitated by this paper, and to credit all refunds and overpayments, to our Deposit Account listed on Applicant's initial application filing transmittal document.

Respectfully submitted,
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